

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PETER A. SPALLUTO
and ACCESS WITH SUCCESS, INC.
Plaintiffs

Vs.

HDP, INC.,
Defendant

CIVIL ACTION NO.:
05-CV-10385-EFH

**DEFENDANT HDP, INC.'S MOTION TO DISMISS
FOR PLAINTIFFS' FAILURE TO ATTEND DEPOSITIONS
AS ORDERED BY THE COURT**

Defendant HDP, Inc. ("HDP") hereby moves, pursuant to F. R. C. P. 37 (b)(2) that the Court dismiss the complaint of the plaintiffs, Peter A. Spalluto ("Spalluto") and Access With Success, Inc. ("Access"), for failure to appear at their respective depositions, despite having been ordered to do so by this Court.

In support of its motion, defendant says that despite the granting of a motion to compel the plaintiffs to appear for their depositions, Mr. Spalluto failed to appear or seek relief from this court. Access With Success, Inc., in a complete charade, appeared through a spokesperson who was completely without knowledge of the information sought in the deposition notice served upon it, and failed utterly to provide any information sought by the defendant. Like Mr. Spalluto, Access with Success, Inc. sought no protective order or other relief from this Court regarding the obligation to appear imposed by this Courts order compelling its deposition.

Defendant further relies on the memorandum of law attached filed herewith and the exhibits attached thereto.

Wherefore, because the plaintiffs refused to comply with the order of this Court compelling their attendance at their respective depositions, the defendant moves that the complaint be dismissed forthwith, and with prejudice and costs.

Respectfully submitted,
HDP, INC.
By its Attorney,

/s/ Brian J. McMenimen

Brian J. McMenimen
BBO # 338840
Adler Pollock & Sheehan P.C.
175 Federal Street
Boston, Massachusetts 02110
(617) 482-0600
bmcmenimen@apslaw.com
Dated: March 22, 2007

CERTIFICATE OF COUNSEL

I, Brian McMenimen, attorney for the defendant, HDP, Inc., certify that counsel for the plaintiffs and counsel for the defendant have attempted to confer and resolve or narrow the scope of the issue presented in this motion.

/s/ Brian J. McMenimen
Brian J. McMenimen

CERTIFICATE OF SERVICE

I hereby certify that this document filed through ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on March 22, 2007.

/s/ Brian J. McMenimen
Brian J. McMenimen